

The Gazette of India



EXTRAORDINARY

PART II—Section 1

PUBLISHED BY AUTHORITY

No. 3] NEW DELHI, THURSDAY, APRIL 20, 1950

MINISTRY OF LAW*New Delhi, the 20th April, 1950*

The following Acts of Parliament received the assent of the President on the 18th April, 1950 and are hereby published for general information.—

THE INDIAN PATENTS AND DESIGNS (AMENDMENT) ACT, 1950.

No. XXXII of 1950

An Act further to amend the Indian Patents and Designs Act, 1911.

Be it enacted by Parliament as follows:—

1. Short title.—This Act may be called the Indian Patents and Designs (Amendment) Act, 1950.

2. Amendment of Act II of 1911.—In the Indian Patents and Designs Act, 1911 (hereinafter referred to as the said Act), for the words “the States”, wherever they occur, the word “India” shall be substituted.

3. Amendment of section 1, Act II of 1911.—In section 1 of the said Act, for sub-section (2), the following sub-section shall be substituted, namely:—

“(2) It extends to the whole of India except the State of Jammu and Kashmir.”

4. Amendment of section 2, Act II of 1911.—In section 2 of the said Act,—

(a) for clause (7) the following clause shall be substituted, namely:—

“(7) ‘High Court’ means, with reference to any area,—

(a) in relation to a Part A State or a Part B State, the High Court for that State;

(b) in relation to Ajmer, the High Court at Allahabad;

(c) in relation to Bhopal and Vindhya Pradesh, the High Court at Nagpur;

(d) in relation to Bilaspur, Delhi and Himachal Pradesh, the High Court of Punjab;

(e) in relation to Coorg, the High Court at Madras;

(f) in relation to Kutch, the High Court at Bombay;

(g) in relation to Manipur and Tripura, the High Court of Assam;

(h) in relation to the Andaman and Nicobar Islands, the High Court at Calcutta;"

(b) after clause (7) the following clause shall be inserted, namely:—

"(7A) 'India' does not include the State of Jammu and Kashmir;" and

(c) clause (15) shall be omitted.

5. Insertion of new section 2A in Act II of 1911.—After section 2 of the said Act, the following section shall be inserted, namely:—

"2A. *Rule of construction in application of Act to Part B States.*—In the application of this Act to any Part B State, unless the context otherwise requires,—

(a) references to any enactment in force in Part A States but not in force in that Part B State shall be construed as references to the corresponding law, if any, in force in that State;

. (b) references to a court or authority in existence in Part A States but not in existence in that Part B State shall be construed as references to the corresponding court or authority, if any, in that State."

6. Substitution of new sections for sections 22, 23 and 23A in Act II of 1911.—For sections 22, 23 and 23A of the said Act, the following sections shall be substituted, namely:—

"22. *Application for licence.*—(1) At any time after the expiration of three years from the date of the sealing of a patent any person interested may apply to the Controller upon any one or more of the grounds specified in sub-section (2) for a licence under the patent.

(2) The grounds upon which an application under sub-section (1) may be made are as follows, that is to say,—

(a) that the patented invention, being capable of being commercially worked in India, has not been commercially worked therein or is not being so worked to the fullest extent that is reasonably practicable;

(b) that a demand for the patented article in India is not being met to an adequate extent or on reasonable terms, or is being met to a substantial extent by importation of the patented article from other countries;

(c) that the commercial working of the invention in India is being prevented or hindered by the importation of the patented article from other countries;

(d) that by reason of the refusal of the patentee to grant a licence or licences on reasonable terms—

(i) a market for the export of the patented article manufactured in India is not being supplied, or

(n) the working or efficient working in India of any other patented invention which makes a substantial contribution to the establishment or development of commercial or industrial activities in India is unfairly prejudiced,

(o) that by reason of conditions imposed by the patentee upon the grant of licences under the patent, or upon the purchase, hire or use of the patented article or process, the manufacture, use or sale of materials not protected by the patent or the establishment or development of commercial or industrial activities in India is unfairly prejudiced.

(3) An application under this section may be made by any person notwithstanding that he is already the holder of a licence under the patent; and no person shall be estopped from alleging any of the matters specified in sub-section (2) by reason of any admission made by him, whether in such a licence or otherwise, or by reason of his having accepted such a licence.

(4) In this section the expression 'patented article' includes any article made by a patented process.

28. Relief in respect of an application under section 22.—(1) Where an application is made under section 22 the Controller may make an order granting any of the following reliefs, that is to say, the Controller may—

(a) grant a licence to the applicant upon such terms as the Controller thinks fit; and may also where the circumstances so require direct that all other existing licences in respect of the patent shall be revoked, or that the patentee shall forfeit any right which he may have as a patentee, to make, use, exercise or vend the invention or to grant licences under the patent;

(b) revoke any existing licence held by the applicant and grant a new licence upon such terms as the Controller thinks fit, or amend any licence held by the applicant in such manner as the Controller may think fit;

(c) grant a licence under the patent to such customers of the applicant and on such terms as the Controller thinks fit, if the Controller is satisfied that the manufacture, use or sale of materials not protected by the patent is unfairly prejudiced by reason of conditions imposed by the patentee upon the grant of licences under the patent or upon the purchase, hire or use of the patented article or process:

Provided that where the application is made on the ground that the patented invention is not being commercially worked in India or is not being worked to the fullest extent that is reasonably practicable and it appears to the Controller that the time which has elapsed since the granting of the patent has for any reason been insufficient to enable it to be so worked, he may, by order, adjourn the application for such period as will, in his opinion, give sufficient time for the invention to be so worked.

(2) Except in cases where the terms of a licence have been settled by mutual agreement and such terms otherwise provide, any person to whom a licence has been granted under sub-section (1) shall be entitled to call upon the patentee to take proceedings to prevent any infringement

of the patent and if the patentee refuses or neglects to do so within two months after being so called upon, the licensee may institute proceedings for the infringement in his own name as though he were the patentee, making the patentee a defendant and a patentee so added as defendant shall not be liable for any costs unless he enters an appearance and takes part in the proceedings.

28A. Endorsement of patent on application by Government.--(1) At any time after the expiration of three years from the date of the sealing of a patent, the Central Government may apply to the Controller upon any one or more of the grounds specified in sub-section (2) of section 22 for the endorsement of the patent with the words 'Licence of Right'.

(2) An application under this section may also be made on the ground that by the refusal of the patentee to grant a licence or licences on reasonable terms the establishment or development of commercial or industrial activities in India is unfairly prejudiced or the development of an industry, the control of which by the Union is declared by Parliament by law to be expedient in the public interest, is being prevented or hindered.

(3) Where a patent of addition is in force, any application under sub-section (1) either for the endorsement of the original patent or the patent of addition shall be deemed to be an application for the endorsement of both the patents and where any such application is granted or refused it shall be deemed to have been granted or refused in respect of both the patents.

(4) All endorsements of patents made under this section shall be entered in the Register of Patents maintained under section 20.

(5) For the removal of doubts it is hereby declared that nothing in this section shall affect the right of the Central Government or any State Government to make an application for the grant of a licence in respect of any industrial undertaking or trading activity owned or carried on by such Government.

28B. Provision as to patents endorsed 'Licences of Right'.--(1) Where the Controller has made an endorsement upon a patent 'Licences of Right'--

(a) any person shall at any time after such endorsement be entitled as of right to a licence under the patent upon such terms as in default of agreement may be settled by the Controller on the application either of the patentee or of the person applying for a licence;

(b) the Controller may, on the application of a person holding a licence granted under the patent before the endorsement, order the licence to be revoked and grant a new licence by virtue of the endorsement upon terms to be settled in the aforesaid manner;

(c) if in proceedings for the infringement of the patent (otherwise than by the importation of the patented article from other countries) the infringing defendant is ready and willing to take a licence upon terms to be settled by the Controller, no injunction against him shall be awarded, and the amount recoverable against him by way of damages, if any, shall not exceed double the amount which would have been recoverable against him as licensee if the licence had been dated prior to the earliest infringement;

(d) the renewal fees payable in respect of a patent so endorsed shall, as from the date of the endorsement, be one moiety only of the fees which would otherwise have been payable.

(2) The provisions of sub-section (2) of section 28 shall apply to any licence granted under sub-section (1) as they apply to a licence granted under the said section 28.

23C. Exercise of powers on application under section 22 or section 23A.—(1) The powers of the Controller upon an application under section 22 or section 23A shall be exercised with a view to securing the following general purposes, that is to say,—

(a) that inventions which can be worked on a commercial scale in India and which should in the public interest be so worked shall be worked therein without undue delay and to the fullest extent that is reasonably practicable;

(b) that the inventor or other person beneficially entitled to a patent shall receive reasonable remuneration having regard to the nature of the invention;

(c) that the interests of any person for the time being working or developing an invention in India under the protection of a patent is not unfairly prejudiced.

(2) Subject to the provisions of sub-section (1), the Controller shall, in determining whether to make an order in pursuance of any such application or not, take account of the following matters, that is to say,—

(a) the nature of the invention, the time which has elapsed since the sealing of the patent and the measures already taken by the patentee or any licensee to make full use of the invention;

(b) the ability of any person to whom a licence is to be granted under the order to work the invention to the public advantage; and

(c) the risks to be undertaken by that person in providing capital and working the invention if the application is granted;

but shall not take account of matters subsequent to the making of the application.

23D. Procedure on application under section 22 or section 23A.—

(1) Every application under section 22 or section 23A shall specify the nature of the order sought by the applicant and shall contain a statement setting out the nature of the applicant's interest, if any, and the facts upon which the application is based.

(2) Where the Controller is satisfied, upon consideration of any such application, that a *prima facie* case has been made out for the making of an order, he shall direct the applicant to serve copies of the application upon the patentee and any other persons appearing from the Register of Patents to be interested in the patent in respect of which the application is made.

(3) The patentee or any other person desiring to oppose the application may, within such time as may be prescribed or within such further time as the Controller may on application made either before or after the expiration of the prescribed time allow, give to the Controller notice of opposition.

(4) Any such notice of opposition shall contain a statement setting out the grounds on which the application is opposed.

(5) Where any such notice of opposition is duly given the Controller shall notify the applicant, and shall give to the applicant and the opponent an opportunity to be heard before deciding the case.

23E. *Supplementary provisions with respect to orders under section 23 or section 23B.*—(1) Any order made by the Controller under section 23 or section 23B for the grant of a licence shall, without prejudice to any other mode of enforcement have effect as if it were a deed, executed by the patentee and all other necessary parties, granting a licence in accordance with the order.

(2) Notwithstanding anything contained in this Act no order shall be made in pursuance of an application under section 23 or section 23A or section 23B which would be at variance with any treaty, convention, arrangement or engagement applying to India and any other country.

23F. *Appeals.*—(1) An appeal shall lie to the High Court at Calcutta from any order of the Controller made under section 23 or section 23A or under clause (a) or clause (b) of sub-section (1) of section 23B.

(2) Every such appeal shall be made within three months of the date of the order passed by the Controller and shall be in writing and accompanied by the prescribed fee.

(3) In calculating the said period of three months, the time, if any, occupied in granting a copy of the order appealed against shall be excluded.

23G. *Procedure for hearing of appeals.*—(1) When an appeal has been preferred to the High Court at Calcutta under section 23F, it shall be heard by a Bench of not less than two Judges.

(2) The Bench hearing the appeal may, if it thinks fit, and shall, on the request of the parties to the appeal, call in the aid of an assessor specially qualified for the purpose, and hear the appeal wholly or partially with his assistance.

(3) The remuneration, if any, to be paid to an assessor under this section shall in every case be determined by the High Court and be paid by it as part of the expenses of the execution of this Act."

7. **Amendment of section 75, Act II of 1911.**—In section 75 of the said Act, after clause (7) the following clause shall be inserted, namely.—

"(8) applications for endorsement of patent with the words 'Licences of Right'."

8. **Amendment of section 78A, Act II of 1911.**—In sub-section (4) of section 78A of the said Act, the words "or the law of any Part B State" and the words "or in that State, as the case may be" shall be omitted.

THE OPIUM AND REVENUE LAWS (EXTENSION OF APPLICATION) ACT, 1950.

No. XXXIII of 1950

An Act to provide for the extension of certain opium and revenue laws to certain parts of India.

Be it enacted by Parliament as follows:—

1. **Short title.**—This Act may be called the Opium and Revenue Laws (Extension of Application) Act, 1950.

2. **Extension of certain opium and revenue laws to certain parts of India.**—(1) The following Acts, namely,—

(i) the Opium Act, 1857 (XIII of 1857)

- (ii) the Opium Act, 1878 (I of 1878),
- (iii) the Revenue Recovery Act, 1890 (I of 1890),
- (iv) the Government Trading Taxation Act, 1926 (II of 1926),
- (v) the Dangerous Drugs Act, 1980 (II of 1980),
- (vi) the Taxation on Income (Investigation Commission) Act, 1947 (XXX of 1947), and
- (vii) the Payment of Taxes (Transfer of Property) Act, 1949 (XXII of 1949),

and all rules and orders made thereunder, which are in force immediately before the commencement of this Act in certain parts of India, are hereby extended to, and shall be in force in, the rest of India except the State of Jammu and Kashmir

(2) The amendments specified in the Schedule shall be made in the aforesaid Acts.

3. Modifications of State laws relating to income-tax investigation.—If immediately before the commencement of this Act there is in force in any Part B State other than Jammu and Kashmir any law (hereinafter in this section referred to as "the State law") corresponding to the Taxation on Income (Investigation Commission) Act, 1947 (XXX of 1947), that law shall continue to remain in force with the following modifications, namely:—

(a) all cases referred to or pending before the State Commission (by whatever name called) in respect of matters relating to taxation on income other than agricultural income shall stand transferred to the Central Commission for disposal:

Provided that the Central Commission shall not, by reason merely of the transfer of any case under the provisions of this section, be bound to recall or rehear any witness who has given evidence in the case, and may act on the evidence already recorded by or produced before the Commission which was originally investigating into the case:

(b) subject to the other provisions contained in this section, the State law shall, so far as may be, apply to determine the procedure that may be followed, and the powers that may be exercised, by the Central Commission in the disposal of the cases transferred to it under clause (a);

(c) any reference in the State law, by whatever form of words, to the State Government or the State Commission shall, in relation to income other than agricultural income, be construed as a reference to the Central Government or the Central Commission, as the case may be;

(d) the report of the Central Commission shall be submitted to the Central Government, and the Central Government may, by order in writing, direct that such proceedings as it thinks fit under the law in force in the State relating to income-tax, super-tax or excess profits tax or any other law, shall be taken against the person to whose case the report relates in respect of his income other than agricultural income, and upon such a direction being given, all such proceedings may be taken and completed under the appropriate law applicable in the State, as if the direction had been given and the proceedings had been instituted thereunder;

(e) where under any law in force in the State the agricultural income of an assessee is to be included in his total income for the purpose of determining the tax payable by him, the tax payable in respect of his income other than agricultural income shall be an amount bearing to the total amount of tax which would have been payable under the appropriate law in force in the State if a combined assessment had been made, the

same proportion as such income bears to the total income including the agricultural income:

Provided that for this purpose any reduction of tax allowed on the agricultural income by the appropriate law in force in the State shall not be taken into account.

Explanation—In this section, “Central Commission” means the Income-tax Investigation Commission constituted under the Taxation on Income (Investigation Commission) Act, 1947 (XXX of 1947).

4. Repeals and savings.—If immediately before the commencement of this Act there is in force in any Part B State, other than Jammu and Kashmir, or in the merged territory of Cooch Behar any law corresponding to any of the Acts specified in section 2, other than the Taxation on Income (Investigation Commission) Act, 1947 (XXX of 1947), that law shall, upon the commencement of this Act, stand repealed:

Provided that such repeal shall not affect—

(a) the previous operation of that law, or

(b) any penalty, forfeiture or punishment incurred in respect of any offence committed against that law, or

(c) any investigation, legal proceeding or remedy in respect of any such penalty, forfeiture or punishment;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if this Act had not been passed:

Provided further that anything done or any action taken under any provision of that law shall be deemed to have been done or taken under the corresponding provision of the Central Act as now extended to the State and shall continue in force accordingly.

5. Removal of difficulties—If any difficulty arises in giving effect to the provisions of any of the Acts, rules or orders now extended to any part of India in which they were not in force before the commencement of this Act, the Central Government may, by order published in the Official Gazette, make such provision or give such direction as appears to it to be necessary for removing the difficulty.

THE SCHEDULE

[See section 2 (2)]

Enactments amended

Year 1	No. 2	Short title 3	Amendments 4
1857	XIII	The Opium Act, 1857.	(1) In the preamble, omit the words “in the Presidency of Fort William in Bengal”. (2) Insert the following as section 1, namely :— “1. <i>Short title and extent.</i> —(1) This Act may be called the Opium Act, 1857. (2) It extends to the whole of India except the State of Jammu and Kashmir”.

Year 1	No. 2	Short title 3	Amendments 4
1878	I	The Opium Act, 1878.	(1) In section 1, for the words beginning with "It shall extend to" and ending with the words "directs in this behalf", substitute the following, namely :— "It extends to the whole of India except the State of Jammu and Kashmir." (2) In section 3, for the definitions of "import", "export", "transport", "sale" and "sell", substitute the following, namely :— "customs frontiers" means any of the customs frontiers of India as defined by the Central Government under section 3A of the Sea Customs Act, 1878 (VIII of 1878); "import" and "export" mean respectively to bring into, or take out of, a State otherwise than across any customs frontiers; "transport" means to remove from one place to another within the same State; "sale" does not include sale for export across customs frontiers, and "sell" shall be construed accordingly.'
1890	I	The Revenue Recovery Act, 1890.	(1) In sub-section (2) of section 1, for the words and letter "Part B States" substitute the words "the State of Jammu and Kashmir". (2) In sub-section (4) of section 4, for the words and letters "a Part A State or a Part C State" substitute the words "any State to which this Act extends".
1926	III	The Government Trading Taxation Act, 1926.	(1) In the preamble, omit the words "or the Government of any Acceding State or other Indian State". (2) In section 2,— (a) in sub-section (1), for the words, "In Part A States and Part C States" substitute the word "India"; (b) omit sub-section (1A); (c) in sub-section (3), add the following words at the end, namely :— "and "India" means the territory of India excluding the State of Jammu and Kashmir". (3) In section 3, for the words "upon an Acceding State or other Indian State" substitute the words and letter "upon a Part B State".
1930	II	The Dangerous Drugs Act, 1930.	(1) In sub-section (2) of section 1, for the words and letter "Part B States" substitute the words "the State of Jammu and Kashmir". (2) In sub-section (7) of section 39, for the words and letters "or an Act of the Legislature of a Part A State or Part C State" substitute the words "or an Act of any State Legislature".
1947	XXX	The Taxation on Income (Investigation Commission) Act, 1947.	In sub-section (2) of section 1, for the words and letter "Part B State" substitute the words "the State of Jammu and Kashmir".
1949	XXII	The Payment of Taxes (Transfer of Property) Act, 1949.	(1) In sub-section (2) of section 1, for the words and letter "Part B States" substitute the words "the State of Jammu and Kashmir". (2) In the <i>Explanation</i> to section 2, for the words and letter "Part B States" substitute the words "the State of Jammu and Kashmir".

THE FOREIGN EXCHANGE REGULATION (AMENDMENT) ACT, 1950.

No. XXXIV of 1950

an act further to amend the Foreign Exchange Regulation Act, 1947.

BE it enacted by Parliament as follows:—

1. Short title.—This Act may be called the Foreign Exchange Regulation (Amendment) Act, 1950.

2. Amendment of section 1, Act VII of 1947.—In sub-section (2) of section 1 of the Foreign Exchange Regulation Act, 1947 (hereinafter referred to as the said Act), for the words and letter "Part B States", the words "the State of Jammu and Kashmir" shall be substituted.

3. Amendment of section 2, Act VII of 1947.—In section 2 of the said Act,—

(i) in clause (k), for the words and figures "Indian Securities Act, 1920" the words and figures "Public Debt Act, 1944" shall be substituted.

(ii) for clause (ll), the following clause shall be substituted, namely:—

(m) "the States" means the territories comprised within the States to which this Act extends; ;

(iii) the existing clause (m) shall be relettered as clause (n) ; and

(iv) after clause (n), as so relettered, the following clause shall be added, namely:—

"(o) any reference to an enactment which does not extend to a Part B State shall be construed as a reference to the corresponding enactment, if any, for the time being in force in that State.".;

4. Amendment of section 18, Act VII of 1947.—In section 18 of the said Act,—

(i) in sub-section (1), the words "or the United Kingdom" shall be omitted, and

(ii) in sub-section (2), the words "United Kingdom or" shall be omitted.

5. Amendment of section 23, Act VII of 1947.—In section 23 of the said Act,—

(i) after sub-section (1), the following sub-section shall be inserted, namely:—

"(2) Notwithstanding anything contained in section 82 of the Code of Criminal Procedure, 1898 (Act V of 1898), it shall be lawful for any magistrate of the first class, specially empowered in this behalf by the State Government, and for any presidency magistrate to pass a sentence of fine exceeding one thousand rupees on any person convicted of an offence punishable under this section.";

and

(ii) the existing sub-sections (2) and (3) shall be renumbered as sub-sections (3) and (4), respectively.

6. Repeals and savings.—(1) If immediately before the commencement of this Act, there is in force, in any Part B State to which this Act extends, a law corresponding to the Foreign Exchange Regulation Act, 1947 (VII of 1947), such law shall, upon the commencement of this Act, stand repealed.

(2) Notwithstanding such repeal, anything done or any action taken in the

exercise of any power conferred by or under the repealed law shall be deemed to have been done or taken in the exercise of the powers conferred by or under the Foreign Exchange Regulation Act, 1947, as amended by this Act, as if that Act as so amended were in force on the date on which such thing was done or action was taken.

K. V. K. SUNDARAM,
Secy. to the Govt. of India.

